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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3116 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAHADURSINH B JADEJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3116 of 1999

MR SV RAJU for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 27/10/2004

ORAL JUDGEMENT

In the present petition, the petitioner has challenged the order dated nil by which the Government

has ordered that the monthly pension of the petitioner be reduced by an amount of Rs. 370/- on permanent basis.

2. The petitioner had retired on superannuation with effect from 30.6.1995 while working as Assistant Police Commissioner. Before his retirement, the petitioner was served with a charge-sheet dated 1.6.1995. In the said charge-sheet, principally two charges were levelled against the petitioner. It was alleged that with respect to a particular investigation, the petitioner had not written the crime memo. The second charge was that though there was sufficient evidence for issuance of charge-sheet and of arrest of the accused persons, the petitioner had recommended filing of B-summary before the Judicial Magistrate First Class, Rajkot.

3. It is the case of the Department against the petitioner that one Shri Narendra Lalitrai Pujara was alleged to have committed rape on Manjulaben Bhikabhai Koli and thereafter made her drink poisonous medicine, which was narrated by Manjulaben to her sister-in-law and Manjulaben had to be hospitalised in the emergency ward, where she eventually expired.

4. After holding a detailed Departmental enquiry, the Enquiry Officer submitted his report in which he concluded that the charges against the petitioner are proved. The enquiry officer's report was supplied to the petitioner who inturn made his representation. The State Government however, accepted the conclusions of the enquiry officer and found that the petitioner had committed misconduct and in consultation with GPSC, decided to impose penalty of cut in pension of Rs. 370 per month on permanent basis. The petitioner represented against this order but his representation was also rejected.

5. The petitioner has challenged the conduct of the Departmental enquiry and the eventual penalty imposed on him, on various grounds.

6. I have heard learned Assistant Government Pleader Mr. N.D. Gohil and considering the rival submissions, I may examine the validity of each ground one by one.

6.1 The first contention raised by the petitioner is that admittedly there was no pecuniary loss caused to the Government and that therefore, under Rule 189-A of the BCSR, petitioner's pension or gratuity could not have been withheld or reduced. This issue however, has been concluded by the decision of the Hon'ble Supreme Court in

the case of State of Orissa and ors Vs. Kalicharan Mohapatra and anr. reported in AIR 1996 SC 684, wherein while interpreting similar provision in Rule 6 of All India Services (Death-Cum-Retirement Benefits) Rules, 1958, the Hon'ble apex Court found that the Tribunal was in error in holding that unless the charge expressly charges the pensioner with causing pecuniary loss to the Government by his negligence or misconduct during his service, his pension or gratuity cannot be withheld. The first contention of the petitioner therefore fails.

6.2 It was thereafter urged that the Departmental enquiry was initiated after a gap of nearly 4 years and on the ground of delay alone the proceedings should be quashed. It is not possible to accept this contention of the petitioner since the petitioner has not shown any prejudice on account of some delay caused in issuance of the charge-sheet. By very nature of things it would be necessary to collect sufficient material before issuance of the charge-sheet and if some time is consumed, the petitioner cannot contend that the Departmental proceedings should be quashed only on the ground of delay, especially when neither prejudice shown to have been caused to the petitioner, nor the delay is of such an extent which would justify such a course of action.

6.3 The Counsel for the petitioner thereafter submitted that the petitioner was not permitted to engage an Advocate as his legal assistance during the course of enquiry. The petitioner applied by his application dated 15.4.1996 that he wishes to be defended through an Advocate and that necessary decision in this regard may kindly be taken. The application of the petitioner was rejected by order dated 13.5.1996 and it was stated that he may take assistance of his friend. The petitioner has therefore, submitted that on account of not being permitted to be represented through Advocate, the petitioner had been handicapped in his defence.

6.3.1 In support of his contention, learned Counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd., reported in (1991) 2 SCC p.283. In the said decision however, the Hon'ble Supreme Court found that the delinquent was non-legal person and was pitted against the presenting officer who was a person of legal mind and experience and that therefore, non-granting of permission to be represented through a lawyer would amount to denial of natural justice. In the present case, no such averment is made that the presenting officer was a legally trained

mind and reliance on the said decision therefore is not well founded.

6.3.2 The learned Counsel for the petitioner also relied on the decision of the Supreme Court in the case of Krishna Chandra Tandon Vs. The Union of India, reported in (1974) 4 SCC 374. In the said decision, in fact the Hon'ble Supreme Court found that appellant was not entitled under the Rules to the assistance of Advocate during the course of enquiry and the High Court was right in pointing out that all that the appellant had to do was to defend the correctness of his assessment orders. Additionally, it was also found that there was no legal complexity in the case and therefore, the contention that absence of a lawyer deprived the delinquent of a reasonable opportunity to defend himself was not required to be acceded to.

6.3.3 The Hon'ble Supreme Court in the case of Indian Overseas Bank Vs. Indian Overseas Bank Officers' Association and another, reported in (2001) 9 SCC 540, observed the law does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and there is no right to representation by somebody else unless relevant Rules or Regulations recognize such a right and provide for such representation.

6.3.4 In the decision of the Hon'ble Supreme Court in Harinarayan Srivastav Vs. United Commercial Bank and another, reported in (1997) 4 SCC 384, the apex Court observed that when the allegations are simple and not complicated, failure to permit the petitioner to engage an Advocate is not violative of principles of natural justice.

6.3.5 In the decision of the Hon'ble Supreme Court in State of Rajasthan, Jaipur Vs. S.K. Dutt Sharma, reported in 1993 Supp.(4) SCC 61, the Hon'ble Supreme Court found that when the Department was represented by Deputy Superintendent of Police who was a prosecuting inspector for several years, not permitting the delinquent to be represented through a legal practitioner would not be illegal, especially when charges were not of such a nature as could not be contested by the delinquent or a Departmental defence assistant. It was found that the Departmental nominee was not a legal practitioner, nor a prosecuting inspector at the relevant time.

6.3.6 In the decision of the Hon'ble Supreme Court in Indian Instt. of Technology, Bombay Vs. Union of India

and ors. reported in 1991 Supp. (2) SCC 12, the Hon'ble Supreme Court found that the presenting officer was not a legal practitioner and the decision not to permit the delinquent to be represented through a lawyer was upheld.

From the above decisions, it can be seen that right to be represented through a lawyer during the course of enquiry is not an absolute right; especially when the petitioner has failed to establish that the presenting officer was not a legal practitioner or a legally trained mind, his claim for being represented through an Advocate was justly refused by the Department. When it cannot be said that the enquiry involved complicated questions of law and facts, such a decision cannot be characterised as illegal.

7. The petitioner has thereafter contended that number of documents though demanded by the petitioner were not supplied. He therefore contends that the action of the respondents in not supplying the documents has resulted into miscarriage of justice and denial of the requirement of principles of natural justice.

7.1 Counsel for the petitioner has drawn my attention to two applications filed by the petitioner before the enquiry officer, one sometime in June 1995, which was rejected by the authorities on 7th July, 1995 and another application dated 12th August, 1995, in which the petitioner had listed as many as 35 documents for being supplied, which application came to be rejected by order dated 21.9.1995.

7.2 It can be seen that neither in the application filed by the petitioner in June, 1995, nor in the subsequent application dated 12th August, 1995, the petitioner has laid down any foundation for claiming the documents while proving its relevance before the authorities. During the course of the enquiry, the delinquent cannot ask for unrelated and irrelevant documents and non-supply of such documents would not vitiate the Departmental proceedings. If the petitioner requires certain documents in his defence which were not part of the charge-sheet, it was his primary duty to show the relevance of such documents and despite its relevance and importance if such documents are not supplied by the Department, the delinquent would have a case for complaining against non-supply of such documents. When the petitioner had not made out any grounds for production of the documents by establishing its relevance in his defence, non-supply of such documents would not vitiate the enquiry. This argument of the petitioner

also therefore fails.

8. It was next contended by the petitioner that the accused persons were though tried after full-fledged investigation, they were acquitted by the Sessions Court. Counsel for the petitioner has also drawn my attention to certain portions of the judgement of the Sessions Court and contended that when the Sessions Court found that there was no material against the accused persons, the decision of the petitioner to recommend B-summary could not have been faulted with.

8.1 It is by now well settled that the nature of proof required in a criminal case is vitally different from the one required during the Departmental enquiry. Even if the delinquent has been acquitted in a criminal case, that itself would not give any immunity from the Departmental proceedings on the same set of charge, if the Department finds that there is sufficient evidence to proceed against the Government servant.

8.1.1 In the decision of the Hon'ble Supreme Court in Chairman and Mg. Director, United Commercial Bank and ors. Vs. P.C. Kakkar, reported in AIR 2003 SC 1571, the Hon'ble Supreme Court was pleased to observe that acquittal of a delinquent in the criminal proceedings on the same set of charges per-se would not entitle the delinquent employee to claim immunity from the disciplinary proceedings.

8.1.2 In the present case, in fact the petitioner is seeking to place reliance on the decision of the Sessions Court regarding the accused persons and the question of the petitioner's conduct was never directly at issue before the Sessions Court. If the Departmental proceedings are carried on despite such judgement from the Sessions Court, and if there is sufficient material on record to establish the guilt of the delinquent Government servant, the ultimate penalty cannot be set aside simply because the Sessions Court has made certain observations in the judgement of the Sessions case though the issues arising in the Departmental proceedings were never directly at issue before the Sessions Court. This contention of the petitioner also therefore, cannot be accepted.

9. It was next contended by the learned Counsel for the petitioner that the petitioner had only recommended applying for B-summary. He has submitted that ultimately it was the discretion of the trial Court whether to accept or not to accept the B-summary. Though there

cannot be any dispute about this contention, that by itself would not absolve the petitioner from the charges levelled against him. The principal charge against the petitioner was that as a senior officer he recommended filing of B-summary in a case where there was sufficient material to file charge-sheet against the accused persons and the case involved serious offences such as those punishable under Sections 302 and 376 of Indian Penal Code, The petitioner cannot take shelter of the fact that ultimately his recommendation was required to be examined and thereafter accepted or rejected by the trial Court. As a senior Police Officer, it was his bounden duty to take all necessary care and precaution before recommending filing of B-summary in a serious offence like the present one. If the petitioner has recommended filing of B-summary which at the end of enquiry is found to be wholly unjustified and if it is found that there was sufficient material on record to suggest that the accused persons should have been charge-sheeted and proceeded against, the view of the Department that the petitioner committed misconduct by acting in a grossly negligent manner cannot be faulted with.

10. The Counsel for the petitioner thereafter contended that even otherwise the recommendations of the petitioner was justified as he had acted upon the recommendations of the Assistant Public Prosecutor, as also the opinion of the Medical Officer. Counsel for the petitioner has pointed out that the Assistant Public Prosecutor had advised dropping of the charges while the medical officer had opined that no blood of semen were found from the private part of the deceased girl. In the report dated 30.4.1991 however, it clearly stated that he has sent the necessary samples to the Forensic Science Laboratory for verifying the presence or absence of semen. The said laboratory report was available on 11.7.1991, in which it was clearly indicated that blood and semen were both present. The opinion of the APP was rendered after the FSL report was available. The petitioner ought to have examined this important aspect of the matter. When the Medical Officer had only given his interim report and had sent the samples for further examination to the FSL, the petitioner could not have blindly relied upon the report of the medical officer. He ought to have realised that advice of the APP was based on the report of the medical officer, but without taking into account the FSL report which was available by then. On this ground also, I find that the petitioner is not correct in contending that his opinion was well founded and supported by material on record. This contention of the petitioner also must therefore, fail.

11. It was thereafter contended that the petitioner had put in a long meritorious service and was rewarded on number of occasions. That by itself would not absolve the petitioner from his liability, if in a Departmental enquiry he is found to have committed misconduct.

12. It is next contended that the order of penalty is not a speaking order. I do not agree with this suggestion. The order of penalty is based on detailed enquiry report, in which all relevant aspects of the material on record have been examined threadbare. If the disciplinary authority is agreeing with the finding of the enquiry officer, detailed reasons thereof need not be given.

13. It is thereafter contended that the respondents did not consult GPSC before imposing the penalty. This argument is factually incorrect. The order of penalty itself records that the GPSC has been consulted and this argument is therefore, rejected.

14. No other contentions have been raised and I find that there was sufficient evidence on record before the enquiry officer and the Government to hold the charges against the petitioner as proved. The penalty imposed therefore cannot be interfered with. The petition is therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
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